

Application No. 10/518,423 - - - - 3

Remarks

Claims 10-12, 15 and 36 are under consideration.

The Examiner's contention that the claim limitation "solid" does not add any structural limitation to the claims is not warranted, but is not reasonable. It is well established that claims under consideration must be "given their broadest reasonable interpretation consistent with the specification." Phillips v. AWH, 415 F.3d 1303, 75 U.S.P.Q.2d 1321 (Fed. Cir. 2005) (emphasis added). See also M.P.E.P. § 2111. In the context of the specification, particularly at p. 32, lines 7 et seq describing FIGURE 18, one of ordinary skill in the art would have understood the term "solid" to refer to the structure of cylindrical elongate body 181 rather than to its physical state of being solid instead of liquid or gas. In re Am. Acad. of Sci. Tech. Ctr., 367 F.3d 1359, 1364 (Fed. Cir. 2004). In maintaining the rejection the Examiner has overlooked completely the express teachings of the specification as well as the context in which the term "solid" is being used by the applicant. Here the term "solid" further characterizes a cylindrical body. Clearly, the cylindrical body cannot be either a liquid or a gas, thus the term "solid" necessarily imposes a structural limitation on the cylindrical body. See also In re Suitco Surface, Inc., ___ F.3d ___, 94 U.S.P.Q.2d 1640, 1644 (Fed. Cir. 2010) (claims should always be read in light of the specification and teachings in the underlying patent).

The outstanding Office Action does not establish anticipation of the claims by the cited references.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. v. Union Oil Co. of California, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete a detail as is contained in the claim. Richardson v. Suzuki Motor Co., 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. In re Bond, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). That is not the case here.

The rejection of all claims under 35 U.S.C. 102(b) as anticipated by U.S. Patent No. 6,093,207 to Pisharodi is unwarranted and is hereby traversed.

Application No. 10/518,423 - - - - 4

As pointed out previously, Pisharodi does not show the claimed configuration. The elongated implant shown by Pisharodi is not cylindrical. See, for example, the description in Pisharodi at col. 4, lines 3-6 and FIGS. 1, 3, 4, 6 and 8-12. The implant shown by Pisharodi also does not show anchors on the exterior.

In contradistinction, the shape of the claimed stabilizer is unequivocally cylindrical as shown in FIG. 18 that illustrates the elected species. FIG. 18 has indeed a cylindrical elongated body 181.

Also, Pisharodi does not show a cage (88) as contended by the Examiner. Instead, there is shown an oviform insert 68 (FIGS. 6 & 9) held in place on applicator 66 by wedge-shaped key 88. See, for example, col. 8, lines 26-53. It is improper to construe the Applicants' claims based on the reference specification. Applicants' claims can only be construed on the basis of Applicants' own specification. The Examiner has failed to do so.

Claim 11 is directed to an embodiment where the cylindrical body terminates in a distal end that is generally bullet-shaped. Pisharodi fails to show such a configuration.

Claim 12 is directed to an embodiment where the cylindrical body terminates in a distal end that is generally rounded. Pisharodi fails to show such a configuration.

Claims 15 and 36 call for a plurality of spikes that extend outwardly from the outer surface of the cage body. Legend 96 in Pisharodi identifies threads in the cage body (col. 5, line 5) not spikes that extend outwardly from an outer surface of the cage body as presently claimed. Again, Pisharodi fails the test for anticipation of claims 15 and 36. The Examiner's "interpretation" of the peaks of the threaded surface as the spikes defined in claims 15 and 36 is of no moment. There has been no showing whatsoever that one of ordinary skill would have interpreted a threaded surface as one carrying spikes. Applicants submit that one of ordinary skill would have had no reason to arrive at such interpretation.

The additional rejection of all claims under 35 U.S.C. 102(b) as anticipated by U.S. Patent No. 6,123,705 to Michelson likewise lacks merit, and is hereby traversed.

As previously noted, the present claims define a cage having a solid body and an open proximal end for receiving an insertion tool shaft. In contradistinction, Michelson shows a hollow, perforate cylinder with a closed bottom and a threaded, removable cap. The hollow perforate cylinder is adapted to receive a bone fusion enhancing material. Col. 10,

Application No. 10/518,423 - - - - - 5

lines 25-32. This feature is not present in the structure of the claimed spinal stabilization device. Accordingly, there can be no anticipation.

The foregoing discussion distinguishes fully the present claims over the applied references and places this application in condition for allowance. Early passing of this application to issue is deemed to be in order.

Respectfully submitted,

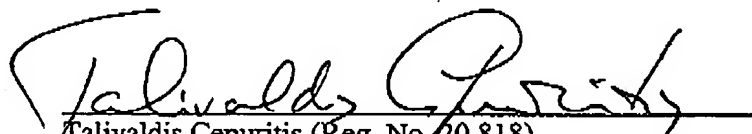
July 19, 2010

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